

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CONTEMPT PETITION NO. 700 OF 2022
IN
WRIT PETITION NO. 4207 OF 2021**

Prakash Dadarao Mhaske ...Petitioner
Versus
State of Maharashtra and Ors. ...Respondents

Mr. Shailendra S. Kanetkar a/w. Mr. Yash Dewal for the Petitioner.
Mr. N.C. Walimbe, Addl. G.P. a/w. Ms. Nisha Mehra, AGP for the
Respondent No. 1-State.
Mr. Vinod Joshi for Respondent No.4.
Mr. K. R. Dubanshi, Senior Accounts Officer is present.

**CORAM : NITIN JAMDAR &
M. M. SATHAYE, JJ.**

DATED : 24 JULY 2024

P.C.:

1. Heard learned Counsel for the parties. Perused the record.
2. This Contempt Petition is filed for breach of this Court's order dated 28 April 2022 passed by this Court in WP/4207/2021. By the said order it was directed that the Petitioner is governed by the old pension scheme and the present Respondent Nos. 2 and 3 (who are Respondent Nos. 3 & 4 in that petition viz. Education Officer (Secondary) Zilla Parishad, Solapur & Superintendent, Salary and PF Squad, Solapur

respectively) were directed to take necessary steps to ensure that the Petitioner gets such benefits within a period of 3 months from the date of production of order. The Petitioner communicated this order and produced its copy before Respondent No. 2 Education Officer on 10 May 2022. Copy of acknowledgement is produced at Exh. 'C'. Therefore the time given by this Court expired sometime around 10 August 2022.

3. The breach is also alleged against present Respondent No.1 - the State of Maharashtra & Respondent No. 4 - Senior Accounts Officer in the office of Accountant General, Mumbai. We however note here that the direction in the original order (including time frame) was only against present Respondent Nos. 2 and 3.

4. On 18 November 2022, simple notices were issued.

5. On 8 February, 2023, one Mr. Prakash M. Mishra – Respondent No. 3 Superintendent filed reply affidavit.

6. On 5 January 2024 after noting the grievance of the Petitioner, the matter was adjourned by us and an opportunity was given to the Respondents to comply with the order dated 28 April 2022.

7. Thereafter, On 20 February 2024, one Mr. Kirti Dubhashi – Respondent No. 4 - Senior Officer filed reply affidavit.

8. Thereafter on 21 February 2024, learned AGP appearing for the Respondent No. 1 to 3 State made a statement that Review Petition is filed challenging the original order. The Petitioner however pointed out

that Review is filed by the State belatedly, almost 1 year after the order only to avoid compliance and same arguments are sought to be raised in the Review, which were raised in the original Petition. In that view of the matter, though hearing of this Contempt Petition was again deferred to 1 April 2024, the Respondents were put to notice that in case the Review is rejected, necessary consequences will ensue and the matter will proceed under contempt jurisdiction.

9. It is clear from the record that the Review filed by the Respondent No. 1-State was rejected on 22 February 2024 and only thereafter on 1 April 2024 the pension of the Petitioner was sanctioned.

10. Despite the fact that the Respondents were put to notice that if the Review is rejected, consequences will ensue and the matter will proceed under the contempt jurisdiction, no further affidavits were filed and time was sought. Therefore on 1 April 2024 again the matter was adjourned to 25 April 2024 to give one more opportunity to the Respondents.

11. In these circumstances, on 23 April 2024, two affidavits came to be filed. One by Respondent No. 3 - Mr. Prakash Mishra, former Superintendent and other by one Ms. Subhalakshmi Subramaniam, Senior Accounts Officer from the office of Accountant General on behalf of Respondent No. 4.

12. On 25 April 2024 we have already noted that what the affidavit of the Officer from Accountant General (Mr. Dubhashi) seems to convey is

that since the government has directed that in cases where the orders of this Court are contrary to the Rules, before implementing the order and sending the cases to the office of the Accountant General, an administrative approval is necessary. We have already noted that such stand is objectionable and that the Circular dated 3 April 2023 relied upon by the Respondent No. 4 was issued to avoid filing of contempt petition against the officers of the Education Department and to streamline the procedure so that orders can be complied with in time. We have also noted that this Circular cannot be taken as a defence for not completing the action in time. We have also noted that in the affidavit of Mr. Prakash Mishra, who is now transferred as Education Officer (Primary), Yavatmal, the stand taken is about movement of files with reference to filing of a review, that too, after a period of one year after original order was passed. We have noted that it was not a satisfactory stand.

13. After the contempt notices were issued, Respondent No. 2 – Education Officer Mr. Bhaskarrao S. Babar has filed reply-affidavit dated 25 June 2024 explaining steps taken by him. It is admitted that the order of this Court dated 28 April 2022 (of which breach is complained) was received by his office in May 2022. It is contended that immediately on 9 June 2022, the Petitioner's proposal was sent to office of the Accountant General and thereafter on 27 July 2022, the office of the Account General has raised a query about the administrative approval. It is further

contended that the said Education Officer was on medical leave from November 2022 till January 2023 and was thereafter transferred from that post in February 2023.

14. After the contempt notices were issued, said Mr. Kirti Dubhashi has filed 2nd reply-affidavit on behalf of Respondent No. 4, pointing out that its office being a constitutional authority has no reason to have any deliberate intention of committing contempt of this Court's order. He has pointed out that the office of the Accountant General was not a party in the original proceeding and as such it has been unnecessarily dragged in the contempt proceedings.

15. The said officer has reiterated the stand that the administrative approval is required and therefore the concerned department of the Respondent No. 1-State ought to have obtained prior administrative approval before sending the pension proposal to its office. He again contended that the Respondent No. 1-State has not taken appropriate decision and the Respondent Nos. 2 and 3 have directly forwarded pension case of the Petitioner without obtaining prior administrative approval to the Respondent No. 4. It is further contended that the present case is not the only case in question and there are many similarly placed employees who may approach the Court placing reliance on the decisions given by this Court on case to case basis and since this involves financial implication in the state ex-chequer, the administrative sanction from the government is required under the applicable Rule Nos. 4 & 7 of

MCS (Pension) Rules 1982.

16. It is pointed out that after receiving notice of the present Contempt Petition, the office of Respondent No. 4 has issued several reminders to the Respondent Nos. 1, 2 and 3 on November 2022, January 2023, February 2023, April 2023, July 2023, February 2024 and lastly on March 2024. It is contended that ultimately administrative approval is granted on 15 March 2024 after which the pension proposal was resubmitted by the Respondent No. 3 on 28 March 2024 and the Respondent No. 4 has issued necessary order within 7 working days i.e. on 1 April 2024. Finally, it is submitted that in the event this Court comes to the conclusion that the Respondent No. 4 has committed the Contempt of Court, unconditional apology is tendered.

17. Considering the aforesaid dates, we are of the opinion that the officers of the Respondent Nos. 1 State viz. Respondent No. 2 and Respondent No. 3 i.e. concerned Education Officer and concerned Superintendent have not been diligent enough and have dragged their feet in complying with the order of this Court. Assuming that administrative approval was necessary in the present case, the same is not sought and followed up within a reasonable time. A review is admittedly filed at belated stage on 20 September 2023 as reflected in the record and ultimately it is only after rejection of review on 22 February 2024, that the pension is sanctioned on 1 April 2024.

18. We note here that there is increasing tendency of filing Review Petitions after contempt petitions are filed by the parties seeking review of original orders. It is also observed that these Review Petitions are not moved by the State in time and simply kept pending to be used as a general defence in the Contempt Petition. In various orders passed by this Court, we have placed our disapproval on record about such practice adopted by the Respondent-State and its officers.

19. In this case also, we find that after the present Contempt Petition is filed on 22 September 2022, Review is filed after almost an year on 20 September 2023 and that too after this Court issued simple notices on 18 November 2022 in this contempt petition. Then, after we passed order on 5 January 2024 in the present contempt Petition, the review is moved and it is ultimately rejected on 22 February 2024. This was a simple case of pension entitlement. This Court had concluded that the Petitioner is entitled to old pension scheme, after hearing the Respondent Nos. 1 to 3 and time frame was stipulated. The order was neither challenged in superior Court, nor vacated nor varied. It held the field and was binding on parties. As noted earlier the belated decision of filing review has also been rejected. It can not be that merely because during pendency of contempt petition the order is complied, contempt action has to be automatically dropped. In this contempt petition also, enough opportunity was given to comply, but the matter has been stretched.

20. In that view of the matter, to inculcate discipline, we find it

appropriate and accordingly order the Respondent No. 1-State to pay Rs.25,000/- to the State Legal Aid Fund of the Legal Services Authority, which is established under Section 16 of the Legal Services Authorities Act, 1987 within a period of four weeks from today. The Respondent No. 1-State is at liberty to initiate an inquiry to fix responsibility and recover the said amount from the concerned responsible officers.

21. The Contempt Petition is accordingly disposed of.

(M. M. SATHAYE, J.)

(NITIN JAMDAR, J.)